IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1141 OF 2007
IN
CRIMINAL APPEAL NO.902 OF 2007
AND
CRIMINAL APPLICATION NO.1142 OF 2007
IN
CRIMINAL APPEAL NO.903 OF 2007
AND
CRIMINAL APPLICATION NO.1163 OF 2007
IN
CRIMINAL APPEAL NO.886 OF 2007

Criminal Application No.1141 of 2007

Ivan Bernard Nunes & Others. .. Applicants
(Org.Accused Nos.1 to 3)

Vs.

Union Territory of Dadra &
Nagar haveli. .. Respondents
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S/Shri Adik Shirodkar, Sr.Advocate i/b B.D.Joshi, Advocate for the Applicants.

S/Shri Raja Thakare & A.M.Chimalkar, Advocates for the Respondent No.1.

Smt.A.S.Pai, APP for the State.
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AND

Criminal Application No.1142 of 2007

Jugal Bhikhu Patel & Ors. .. Applicants
(Org.Accused Nos.4 to 6)

Vs.

Union Territory of Dadra &

Nagar haveli. .. Respondents

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S/Shri Adik Shirodkar, Sr.Advocate i/b B.D.Joshi, Advocate for the Applicants.

S/Shri Raja Thakare & A.M.Chimalkar, Advocates for the Respondent No.1.

Smt.A.S.Pai, APP for the State.

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AND

Criminal Application No.1163 of 2007

Mr.Natwarsinh Ramsinh Chouhan
& Anr. .. .. Applicants
(Org.Accused Nos.8 & 9)

Vs.

The Union Territory of Dadara &
Nagar Haveli, Silvassa, & Anr. .. Respondents

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Mr.Sabnis, Sr.Advocate, i/b Subodh Desai, Advocate for the Applicants.

Mr.Raju Thakare and A.M.Chimalkar, Advocates for the Respondent No.1.

Smt.A.S.Pai, APP for the Respondent No.2.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 2nd November, 2007

P.C.

1. Heard the learned counsel for the applicants and the learned APP for State. The Criminal Application No.1141 of 2007 has been preferred by the original accused Nos.1 to 3, Criminal Application No.1142 of 2007 has been preferred by the original accused Nos.4 to 6 and the Criminal Application No.1163 of 2007 has been preferred by the original accused Nos.8 and 9. We would be referring to the applicants in all the three applications as per their status during the trial. All the applicants have been convicted mainly under Section 302 of the IPC by the learned Sessions Judge, Dadra & Nagar Havelli, Silvassa. The applicants are now seeking bail. It is stated on behalf of the accused persons that they all were on bail during the pendency of the trial.

2. It is the prosecution case that on 29th April, 1996, about 10 to 12 persons including the accused persons assaulted Bapjibhai and caused his death. There are number of eye witnesses to the incident including PW 1 Damabhai Lachiyabhai Choudhary. From the evidence of Damabhai and other witnesses, it is seen that only the accused Nos.1 to 3 assaulted Bapjibhai. The evidence on record shows that these three accused persons have assaulted Bapji with swords. Bapjibhai has sustained only one stab injury

and two abrasions in the incident. As far as the stab injury is concerned, PW 17 Dr. J.M.Rao, Medical Officer attached to Primary Health Centre, Khanvel, has stated that the injury would be possible with a weapon having sharp edge on both the sides. Dr.Rao has categorically stated that the said stab injury is not possible with sword. Thus, it is seen there are discrepancies between the medical evidence and the evidence of the eye witnesses. Besides this, we do not find much merit in the submission that these three accused persons assaulted the deceased with sword as assault by three persons with sword would cause more than one stab wound and two minor abrasions. In the present case, though it is the prosecution case that these three accused persons i.e. Accused Nos.1 to 3 assaulted the deceased with sword, only one injury is attributed to sharp edge weapon which caused death of Bapjibhai. We have already observed that the evidence of the witnesses in relation to the said injury is not corroborated by the medical evidence.

3. Reliance was placed on the decision of this Court in **Amin Khan Amanullah Khan & Anr. v. State of Maharashtra,** reported in 2003(4) Mh.LJ 221, wherein it has been observed that the judgment of conviction cannot be totally discarded while considering the

application for bail after conviction. It is also observed that the consideration while granting bail during the trial and the consideration for granting bail after the accused have been convicted would be very different. We are entirely in agreement with the observations in the said judgment. However, it cannot be ignored that in the present case, the original accused No.7 came to be acquitted on the ground of alibi which was raised by him. Thus, it is seen that the learned Sessions Judge has disbelieved the evidence of the eye witnesses who had implicated accused No.7 in relation to their implicating him. Moreover, from the evidence, it is seen that besides the present accused persons, there were another 10 to 15 persons who were having iron rods, Guptis and Swords and they all have assaulted Bapjibhai. The learned Sessions Judge has not considered this aspect of the matter at all.

4. As far as the eye witness PW 11 Dharam Sonka Sambhar is concerned, it has been brought out in the cross-examination that he came to know that Bapjibhai was killed about 1 and 1/2 hour after he dropped on the way near congress office at Khanvel. This shows that this witness has not witnessed the incident. Looking to the discrepancy in the evidence of the eye

witnesses and the medical evidence and the fact that the applicants were on bail during the trial, we are inclined to grant bail to the applicants. The applicants shall be released on bail in the sum of Rs.50,000/- each (Fifty Thousand) with one or two sureties to make up the said amount. The applicants shall report to the Silvassa Police Station once in a month i.e. first Monday of every month, during the pendency of the aforesaid appeals, between 5.00 p.m. and 7.00 p.m..

5. The above applications are disposed of accordingly.

(R.M.S.KHANDEPARKAR, J)

(SMT.V.K.TAHILRAMANI, J)